



May 3, 2000

Mr. Scott McAnally  
Executive Director  
Research and Oversight Council on Workers' Compensation  
105 West Riverside Drive, Suite 100  
Austin, Texas 78704

OR2000-1731

Dear Mr. McAnally:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134740.

The Research and Oversight Council on Workers' Compensation (the "ROC") received a request for information relating to the contract award for HB3697 studies. Although you explain that most of the responsive information has been made available to the requestor, you state that one of the bidders, Workers' Compensation Research Institute ("WCRI"), has objected to the release of portions of its bid proposal. You raise no exception to disclosure on behalf of ROC, and make no arguments regarding the proprietary nature of WCRI's information.

Pursuant to section 552.305 of the Government Code, you notified WCRI of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). WCRI responded to the notice by stating that its cost proposal, which consists of its employees' salaries, is protected from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which defines a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage

over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958). If, as is the case here, the governmental body takes no position on the application of the “trade secrets” component of section 552.110 to the requested information, this office will accept the third party’s claim for exception to disclosure as valid under that aspect of section 552.110 if that person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.<sup>1</sup> *See Open Records Decision No. 552 at 5 (1990).*

The information at issue consists solely of the salary information of WCRI’s employees. We are not persuaded by WCRI’s arguments that salary information meets the definition of a “trade secret” as defined by the Restatement of Torts. *See Open Records Decision No. 319 (1982)* (information relating to organization, personnel, qualifications, and experience not ordinarily trade secret information). Therefore, the submitted cost proposal may not be withheld under the first prong of section 552.110.

WCRI also contends that its cost proposal is excepted from disclosure under the second prong of section 552.110, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, and not

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<sup>1</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; [and]
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS, § 757 cmt. b (1939); *see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).*

mere conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). In support of its claim under section 552.110(b), WCRI states that the requestor, Research & Planning Consultants, L.P., and WCRI are "direct competitors, both frequently submitting competing bids for various projects." WCRI further contends that the release of its employee salaries to its direct competitor would "immediately and substantially disadvantage WCRI by allowing competitors to recruit WCRI staff using the disclosed salary and expense information."

Having considered WCRI's arguments and reviewed the information at issue, we conclude that WCRI has not made a persuasive factual or evidentiary showing that the release of its employees' salaries would necessarily subject WCRI to substantial competitive harm in connection with any other prospective business opportunity. *See* Open Records Decision No. 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative); *see generally* Open Records Decision No. 319 (1982) (stating that pricing proposals are entitled to protection only during bid submission process); Freedom of Information Act Guide & Privacy Act Overview 136-138, 140-141, 151-152 (1995) (disclosure of prices is cost of doing business with government). *Cf.* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 184 (1978). Accordingly, we conclude that WCRI's cost proposal may not be withheld from disclosure under section 552.110(b). The cost proposal must, therefore, be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

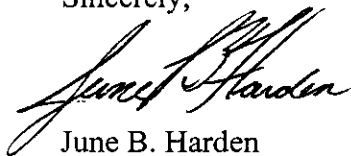
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ljp

Ref: ID# 134740

Encl. Submitted documents

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